



## SCENIC AMERICA

RECEIVED

NOV 14 1997

FCC/DOCKET

November 13, 1997

Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

To whom it may concern:

On behalf of Scenic America, I submit the following comments regarding the Federal Communications Commission's Notice of Proposed Rule Making in the matter of preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities, MM Docket No. 97-182. I ask that our comments be included in the record.

Scenic America is the only national nonprofit organization solely dedicated to preserving and enhancing the scenic character of America's communities and countryside. We have helped dozens of states and hundreds of communities to take steps to preserve their distinctive scenic heritage.

Scenic America strongly opposes any action by FCC to preempt local zoning authority in this matter. In particular, we believe that the proposed preemption would degrade scenic beauty and community character and run roughshod over local governing bodies, results which would serve neither federal nor state and local interests.

Zoning and land use decisions are clearly best decided at the local level, where decision makers may weigh competing interests and community goals in an effort to arrive at balanced, intelligent solutions. The proposed preemption would dramatically alter that balance and would, therefore, raise the roll-out of digital television above every other state or local goal. Such a move would be ironic, since the current Congress has focused much attention on the importance of maintaining federalism and respecting state and local authority, which the proposed preemption would trample.

It is well established that an intelligent land use plan can improve community livability, enhance community appearance, and boost local economies. The success of these plans depends on their ability to balance competing interests for the broader good of the entire community. Enhancing property values and preserving community appearance are among the most important of the goals of zoning. But the proposed preemption would allow state and local governments to deny permits based only on "expressly stated health or safety objectives." This requirement is overly prescriptive in its emphasis on "expressly stated" objectives. Even more troubling, it

NO. of Copies rec'd  
Ltr ABOVE

049



would prevent communities from considering aesthetic, land use, or property values impacts of these towers -- thereby eliminating from consideration several of the most important goals of land use planning.

It is possible that a case can be made that health and safety concerns generally should be the sole responsibility of the FCC, since such "one-stop shopping" may adequately protect public health and safety while facilitating the roll-out of digital television. However, no such compelling case exists for broadcasters to be given such broad control over community zoning and land use decisions. Since zoning and land use decisions do not lend themselves to "one size fits all" regulations, the FCC should steer clear of preempting local and state governments.

There are a variety of other factors which make the NAB petition extremely troubling: the tight time limits it would impose on local decision makers; the breadth of the requested preemptions, which would include radio broadcast towers and broadcast transmission facilities; and provisions which would make FCC the venue of appeal when a zoning application is denied. All of these contribute to a proposal which could render local decision making bodies almost irrelevant in the siting of these towers.

The siting of towers for digital television, for cellular communications, and for other purposes is a complex and contentious issue which requires careful consideration and close collaboration among broadcasters, local governments, and other stakeholders. As a scenic conservation organization, we receive frequent requests from community activists concerned about these towers -- concerned not only about health and safety but also about their property values, the scenic quality of their landscapes, and other important issues. Their concerns are real and legitimate. Given this contentiousness, FCC might play a valuable role in fostering discussion and agreement among broadcasters and communities or in broadly disseminating creative solutions to these thorny problems. But it makes no sense at all for the federal government, in the form of FCC, to usurp local land use authority because the NAB claims, without demonstrating a factual basis, that local governments are obstacles to the roll-out of digital television.

Ultimately, local land use decisions are best made at the local level where local governments may balance competing interests. A federal preemption of local authority in this manner would be intrusive and unproductive, and we strongly oppose FCC preemption of local zoning and land use decisions.

Sincerely,



Frank Vespe  
Vice President for Policy and Communications

cc: Jeff Soule, American Planning Association  
Betsy Merritt, National Trust for Historic Preservation  
Bob Fogel, National Association of Counties